

**COMMONWEALTH OF MASSACHUSETTS
TOBACCO PRODUCT MANUFACTURER (TPM) CERTIFICATION ([M.G.L. c. 94F](#))
(February 2010)**

GENERAL INSTRUCTIONS

Who is required to file the TPM Certification:

Every Tobacco Product Manufacturer (TPM) whose Cigarettes are sold in Massachusetts, whether directly or through a distributor, retailer, or similar intermediary, is required to complete and file this TPM Certification.

For Non-Participating Manufacturers (NPMs), the TPM Certification supersedes the Massachusetts Certificate of Compliance by Non-Participating Manufacturer, and satisfies the filing requirements of both [Chapter 94E](#) and [Chapter 94F](#) of the Massachusetts General Laws.

When the TPM Certification is due:

As of August 4, 2004, cigarettes cannot be stamped for sale in Massachusetts or sold in Massachusetts unless they are listed on the TPM Directory. A TPM that intends to sell Cigarettes in Massachusetts must file an **Initial TPM Certification** and qualify for listing on the TPM Directory before its Cigarettes can be sold in Massachusetts.

An **Annual TPM Certification** must be filed on or before April 30 of each year. The NPM escrow deposit is due on April 15 for sales made during the preceding calendar year.

When a Supplemental TPM Certification is due:

A TPM must file a **Supplemental TPM Certification** no later than 30 days prior to any change regarding its Brand Families. In all other circumstances, a Supplemental TPM Certification must be filed immediately upon receipt of new information that makes the current TPM Certification incorrect. In completing a Supplemental TPM Certification, the TPM should indicate that the certification is a Supplemental TPM Certification on Page 1, enter only the new or changed information, and sign and date the Supplemental TPM Certification.

Where the TPM Certification must be filed:

[Chapter 94F](#) requires the TPM Certification to be delivered to the Attorney General and to the Commissioner of Revenue. Please mail the TPM Certification and all required attachments to the following addresses:

Original:

Tobacco Enforcement
Office of Attorney General Martha Coakley
One Ashburton Place
Boston, MA 02108-1598

Copy:

TPM Directory
Rulings and Regulations Bureau
Department of Revenue
P.O. Box 9566
Boston, MA 02114-9566

Language:

The TPM Certification and all other required forms must be completed in English. For all attachments required by the Certification, if the original document is in a language other than English, a true and correct translation into English must be attached in addition to the original.

Complete Certification:

Unless this is a Supplemental TPM Certification (see above), a TPM Certification may not be approved if information appears to be missing. Do not leave any fields blank. If a field is not applicable, indicate “N/A.” Attach additional sheets if necessary, indicating the field to which they apply.

Additional Information and Documents:

The Attorney General may request additional information and documents in considering the TPM Certification. A failure or refusal to provide such information or documents may be grounds for disapproval and exclusion from the TPM Directory.

Statements under Penalties of Perjury:

Statements made in the TPM Certification are made under penalties of perjury. Any misrepresentation in the TPM Certification also may be grounds for disapproval and exclusion from the TPM Directory.

Who Must Sign the TPM Certification:

The TPM Certification must be signed by an authorized officer of the Company.

Record Retention:

The TPM must maintain all invoices and documentation of sales and other such information it relied on in preparing its TPM Certification for a period of five years, unless otherwise required by law to maintain them for a longer period.

Regulations:

[Chapter 94F](#) of the General Laws authorizes the Commissioner of Revenue and the Attorney General to promulgate regulations to effectuate its purposes. The Commissioner of Revenue has promulgated a regulation at [830 CMR 94E.00](#). The Attorney General has promulgated a regulation at [940 CMR 24.00](#). TPMs must comply with the applicable provisions of the regulations.

Other Laws:

Approval of the TPM Certification and listing on the TPM Directory indicates only that the TPM has satisfied the requirements of [M.G.L. c. 94F](#), and does not necessarily mean that other applicable laws have been satisfied.

DEFINITIONS

(a) “**Affiliate**” means a person who directly or indirectly owns or controls the Company, a person who directly or indirectly is owned or controlled by the Company, or a person who directly or indirectly is under common ownership or control with the Company. For purposes of this definition, the terms “owns,” “is owned,” and “ownership” mean ownership of an equity interest, or the equivalent, of 10 percent or more.

(b) “**Brand Family**” means all styles of Cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, “menthol,” “lights,” “kings,” and “100s,” and includes any use of a brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other

indicia of product identification identical or similar to, or identifiable with, a previously known brand of Cigarettes.

(c) “**Cigarette**” has the same meaning as in [M.G.L. c. 94E](#) and [M.G.L. c. 94F](#), and includes “roll-your-own” or “RYO” (0.09 ounces of RYO constituting one individual cigarette).

(d) “**Company**” means the Tobacco Product Manufacturer that is submitting the TPM Certification.

(e) “**Master Settlement Agreement**,” or “**MSA**,” is defined in [M.G.L. c. 94E](#).

(f) “**Nonparticipating Manufacturer**,” or “**NPM**,” means a Tobacco Product Manufacturer that is not a Participating Manufacturer.

(g) “**Participating Manufacturer**,” or “**PM**,” is defined in the MSA, including any amendments to the MSA.

(h) “**Person**” means an individual, partnership, committee, association, corporation, or any other organization, or any other organization or group of persons.

(i) “**Qualified Escrow Fund**” is defined in [M.G.L. c. 94E](#).

(j) “**Tobacco Product Manufacturer**,” or “**TPM**,” is defined in [M.G.L. c. 94E](#).

(k) “**TPM Directory**” means the public directory of Tobacco Product Manufacturers, published by the Commissioner of Revenue, that have provided TPM Certifications conforming to the requirements of [M.G.L. c. 94F](#) and approved by the Attorney General, and the Brand Families listed in such TPM Certifications.

(l) “**Units Sold**” is defined in [M.G.L. c. 94E](#).

SPECIFIC INSTRUCTIONS

Type of TPM Certification

All TPMs must complete and file a TPM Certification each year in order to be listed on the TPM Directory. Indicate whether the TPM Certification is an Initial Certification, an Annual Certification, or a Supplemental Certification.

“**Initial TPM Certification**” means that this filing is the first time that the Company is filing a TPM Certification.

“**Annual TPM Certification**” means that the Company previously filed an Initial TPM Certification, and that this filing is the Company’s annual certification due April 30 of the year following the year of sales.

“**Supplemental TPM Certification**” means that this filing is an amendment to a previous filing. In this case, indicate only the new information.

PART I: MANUFACTURER INFORMATION

All TPMs complete this Part.

PART II: PM/NPM STATUS

All TPMs complete this Part.

PART III: BRAND FAMILY IDENTIFICATION

Each TPM must list all of its Brand Families, regardless of whether there were any sales in Massachusetts during the previous year. If the brand is “roll-your-own,” designate by checking “RYO” after the brand name.

The TPM must update the list at least 30 days before any addition to or modification of its Brand Families (including removal), by executing and filing a Supplemental TPM Certification.

A. Participating Manufacturers

In Subpart A, a Participating Manufacturer must list all of its Brand Families.

By listing a Brand Family, the Participating Manufacturer affirms that the Brand Family is deemed to be its Cigarettes for the purpose of calculating its payments under the MSA for the relevant year.

B. Non-Participating Manufacturers

In Subpart B, a Non-Participating Manufacturer must list all of its Brand Families and, for each Brand Family, state the number of Units Sold in Massachusetts during the preceding calendar year (including RYO at 0.09 ounces per Unit Sold). For RYO units sold, submit documentation substantiating the reported sales.

List only those Brand Families that the Company directly and physically manufactures.

Additional Information (first column): (1) identify with the parenthetical “(2010)” any Brand Family that has been sold in Massachusetts during 2010; (2) identify with an asterisk (*) any Brand Family that was sold in Massachusetts during the preceding calendar year (2009) and no longer is being sold in Massachusetts as of the date of the Certification.

Complete the calculation of the escrow amount.

On a separate sheet of paper, for each Brand Family: (1) provide the address(es) where the Cigarettes were manufactured, if different from the addresses provided in Part I; (2) state the name and address of any other manufacturer, and the applicable time period(s); (3) state the name and address of the trademark holder, if it is not the Company; (4) state the name and address of any person who made any of the referenced government filings. Check where indicated if the item does not apply.

Each manufacturer of a Brand Family must file a TPM Certification.

By listing a Brand Family, the NPM affirms that the Brand Family is deemed to be its Cigarettes for the purpose of calculating its escrow deposit pursuant to [M.G.L. c. 94E](#).

PART IV: SUPPLEMENTAL DOCUMENTATION

All TPMs complete this Part.

PART V: ESCROW ACCOUNT INFORMATION

All NPMs complete this Part.

If the Financial Institution, Account, or Sub-Account has changed, include Deposit/Withdrawal History for each.

File with the TPM Certification copies of the executed escrow agreement and all amendments, a receipt for each deposit made since the filing of the previous TPM Certification (or if no previous TPM Certification was filed, a receipt for each deposit made since the opening of the Massachusetts Sub-Account), and a receipt or statement showing the current balance of the Massachusetts Sub-Account.

PART VI: AGENT FOR SERVICE OF PROCESS

All NPMs complete this Part.

If the Company is registered to do business in Massachusetts, a copy of the registration filing must be attached. If the Company is not registered to do business in Massachusetts, then it must appoint and continuously engage an agent in Massachusetts for service of process. If an agent is engaged, the Company shall complete and attach a Notice of Appointment of Registered Agent (form) or certify that a previously filed Notice remains in effect.

In the event that the NPM terminates the authority of the agent, the NPM must provide notice to the Attorney General 30 calendar days before the termination, and must provide satisfactory proof to the Attorney General of the appointment of a new agent not less than five calendar days before the termination of the existing agent appointment.

In the event that an agent terminates an agency appointment, the NPM must notify the Attorney General of the termination within five calendar days and provide satisfactory proof of the appointment of a new agent.

PART VII: NPM COMPANY AND COMPLIANCE INFORMATION

All NPMs must complete this Part.

PART VIII: DECLARATION, ACKNOWLEDGMENT, AND SIGNATURE

All TPMs must complete this Part.

The TPM Certification must be signed by an **authorized officer of the TPM**, before a notary public.

ADDITIONAL INFORMATION AND DOCUMENTATION

Additional information and documentation may be requested, including documentation relating to the Company's consent to the jurisdiction of the Superior Court of Massachusetts and the Company's waiver of any sovereign immunity defense for purposes of enforcement actions that the Attorney General may bring under [M.G.L. c. 94E](#) and [M.G.L. c. 94F](#).